

**YOLANDA FLORALDE, NIDA VELASCO AND NORMELITA ALAMBRA,
PETITIONERS, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION
AND PAULINO W. RESMA, RESPONDENTS.**

G.R. No. 123048. August 08, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is a petition for review on certiorari of the decision of the Court of Appeals[1] which reversed and set aside the decision of the Civil Service Commission[2] dismissing respondent Paulino W. Resma from the service as Division Chief of Specialist Services Division (SSD) and Officer-In-Charge of Agricultural Training Institute (ATI), Department of Agriculture.

On April 23, 1994, petitioners employees of the ATI charged respondent Paulino W. Resma with grave misconduct in office (sexual harassment) in three separate complaints filed directly with the Civil Service Commission.

On August 30, 1994, the Commission gave due course to the complaints and formally charged respondent with grave misconduct requiring him to submit his answer with the affidavits of his witnesses, and placed him under preventive suspension for ninety (90) days effective upon notice.

On September 9, 1994, respondent filed his answer to the complaints. He specifically denied all the accusations against him and asked for the dismissal of the complaints.

On September 20, 1994, the Commission resolved to conduct a formal investigation of the case.

At the hearing, petitioners affirmed the contents of their affidavits and gave the specific dates during which the sexual harassment took place. Petitioners categorically narrated the various incidents of sexual harassment, and they were subjected to extensive cross-examination. On the other hand, five witnesses testified for the respondent including himself. In essence, they testified that the sexual harassment could not have occurred.

On February 17, 1995, the Commission convinced that the complainants had proven the guilt of the respondent with substantial evidence, issued a resolution finding respondent guilty of grave misconduct and meted out the penalty of dismissal from the service with all its accessory penalties.[3]

On March 6, 1995, respondent filed a motion for reconsideration, alleging that the Commission erred because the decision was not supported by evidence.[4]

On April 18, 1995, the Commission denied the motion for reconsideration.[5]

On June 16, 1995, respondent elevated the case to the Court of Appeals via petition for review.[6]

After due hearing, on September 22, 1995, the Court of Appeals promulgated its decision which REVERSED and SET ASIDE the resolutions of the Civil Service Commission.

Hence, this appeal.[7]

The issue raised is whether the Court of Appeals erred in reversing the resolutions of the Civil Service Commission on the ground that the same were not supported by substantial evidence.

The sexual harassment charges against Resma were filed by three (3) rank and file employees of the Agricultural Training Institute, where respondent Paulino Resma is OIC. Being rank and file employees, they were all reporting to their superior, Paulino Resma. Their time records were signed by the latter. Sexual harassment in the workplace is not about a man taking advantage of a woman by reason of sexual desire; it is about power being exercised by a superior officer over his women subordinates. The power emanates from the fact that the superior can remove the subordinate from his workplace if the latter would refuse his amorous advances.

This is the situation at bar. Yolanda Floralde, Nida Velasco and Normelita Alambra were all rank and file employees reporting to respondent Paulino Resma, and their Daily Time Records (DTRs) were signed by him.

Respondent Resma alleged that the Civil Service Commission erred in its resolutions since the petitioners were unable to prove his guilt by the quantum of substantial evidence required in administrative proceedings.

We do not agree. The evidence adduced before the Commission consists of the positive testimonies of petitioners. On the other hand, respondent claimed that it was impossible for him to be at the office on the days that the sexual harassment occurred. In other words, respondent presented an alibi.

Yolanda Floralde testified that it was around four in the afternoon at the anteroom of the directors office that Paulino Resma approached her and ask her "Ano yan, pagkatapos ako'y pinalapit sa kanyang kinaroroonan x x x nanatili akong nakatayo ngunit maya-maya ay bigla na lang siyang tumayo at dinakma ang puwit ko ng papisilpasil." [8]

Floralde testified that this was not the only incident that respondent sexually harassed her. Respondent would oftentimes tell her that "nakakagigil ang batok mo, " and "masuwerte ka type kita, yung iba may gusto sa akin di ko type." [9] Respondent would also pinch her at her side close to her bust and when they met at the corridors respondent would make a motion as though he would embrace her.

Nida Velasco on the other hand testified that in 1990 Paulino Resma first made his sexual advances toward her. According to Velsaco "habang binubuksan ko po ang pinto ng refrigerator sa Orosa Hall, bigla po niya akong niyakap at hinawakan niya ang maselang parte ng aking dibdib at bigla po akong hinalikan sa bibig. Binantaan po niya ako na kapag nagsumbong ako ay hindi niya irerene ang aking appointment dahil casual lang po ako." Nida further testified that respondent would often comment that "mamula-mula na ang iyong pag-aari at fresh na fresh ka pa" and that she would answer back "lolo ka na eh, gago ka pa. " [10] At one time she was watching a volleyball game when she felt someone touch her buttocks, when she looked back it was respondent Resma, and the latter said "nakakagigil ka " [11]

Normelita Alhambra on her part testified that in 1990 at around 7:00 in the morning that after putting down her bag, respondent Resma suddenly approached her and embraced her. She was able to escape from his embrace. In other instances, Normelita testified that "tuwing maglalagay ako ng tubig sa baso sa loob ng CR biglang sumusulpot si Mr. Resma at dinadakma ang puwit ko at sinasabing gustong-gusto niya ang malalaking puwit." [12] Also at one time Normelita testified that "nakasuot ako ng long sleeve na red at white maong pants galing ako sa CR ng bigla akong binangga ni Mr. Resma at dinakma ang aking dibdib. [13]

Respondent's defense is that the complaints were instigated by a certain Atty. Ola, who was his rival for promotion. The defense alleged that the three complaining petitioners were all convinced by Atty. Ola to file

charges against respondent Resma so that he would be out of contention for promotion.

We are not convinced that all three women would prevaricate at the mere urging of Atty. Ola. Filing a charge for sexual harassment is not a trivial matter. It entails having to go public with an incident that one is trying to forget. It means opening oneself to public ridicule and scrutiny. We, therefore, can not believe the version of the defense that the charges were all fabricated.

As to the issue of whether the resolution of the Civil Service Commission is supported by substantial evidence, we find that, in fact, preponderant evidence supported its findings.

"In determining where the preponderance or the superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts on which they are testifying, the nature of such facts, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility as far as the same may legitimately appear at the trial. The Court may also consider the number of witnesses, although the preponderance is not necessarily with the greatest number." [14] "By preponderance of evidence, is meant that the evidence as a whole adduced by one side is superior to that of the other." [15]

"The concept of preponderance of evidence refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth." [16]

Consequently, the Court of Appeals erred in reversing the resolutions of the Civil Service Commission. "Well-settled is the rule in our jurisdiction that the findings of fact of an administrative agency must be respected, as long as such findings are supported by substantial evidence, even if such evidence might not be overwhelming or preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence." [17]

WHEREFORE, the Court REVERSES and SETS ASIDE the decision of the Court of Appeals. In lieu thereof, the Court REVIVES and AFFIRMS the resolutions of the Civil Service Commission dismissing respondent Paulino W. Resma from office for grave misconduct. No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

Melo, J., see separate opinion.

Bellosillo, J., abroad on official business.

[1] In CA-G.R. SP No. 37480, promulgated September 22, 1995, Mabutas, Jr., J., ponente, Torres and de la Rama, JJ., concurring, Petition, Annex "A", Rollo, pp. 18-39.

[2] Resolution No. 95-0968, adopted on February 17, 1995, Patricia A. Sto. Tomas, Chairman, Ramon P. Ereneta, Jr. and Thelma P. Gaminde, Commissioners, Petition, Annex "D", Rollo, pp. 46-51.

[3] Petition, Annex "D", Rollo, pp. 46-51.

[4] Petition, Annex "E", pp. 52-57.

[5] Petition, Annex "C", pp. 41-45.

- [6] Docketed as CA-G.R. SP No. 37480.
- [7] Filed on January 2, 1996; Rollo, pp. 3-17. On September 28, 1999, we gave due course to the petition (Rollo, pp. 179-180)
- [8] Record, Affidavit-Complaint, p. 509.
- [9] Ibid.
- [10] Record, Affidavit Complaint, p. 500.
- [11] Record, Affidavit Complaint, p. 500.
- [12] Record, Affidavit Complaint, p. 502.
- [13] Record, Affidavit Complaint, pp. 501-502.
- [14] Sapu-an vs. Court of Appeals, 214 SCRA 701, 706 (1992)
- [15] Ibid.
- [16] Jison vs. Court of Appeals, 286 SCRA 495, 532 (1998)
- [17] Ynson vs. Court of Appeals, 257 SCRA 411, 423 (1996), citing Rubenecia vs. Civil Service Commission, 244 SCRA 640 (1995)

CONCURRING OPINION

MELO, J.:

I am compelled under the circumstances of this case to concur in the result reached by the majority opinion. However, I would just like to add some observations.

As gleaned from the records, on April 23, 1994, Yolanda Floralde, Nida Velasco, and Normalita Alambre, employees of the Agricultural Training Institute (ATI) charged private respondent Paulino Resma, who was then the Officer-In-Charge of the ATI, with sexual harassment in separate complaints filed with the Civil Service Commission (CSC). In a resolution dated February 17, 1995, the CSC found private respondent Resma guilty of grave misconduct and ordered his dismissal from the service. Following the denial of his motion for reconsideration, private respondent Resma elevated the issue to the Court of Appeals, which thereafter set aside and reversed the decision of the CSC. Private complainants Floralde, Velasco, and Alambre then sought review and reversal of the decision of the Court of Appeals with this Court.

In *Paredes v. Civil Service Commission* (192 SCRA 84 [1990]), we held that in CSC cases, the right to appeal is limited only to the party adversely affected by the decision, that is, only the person or the respondent employee who has been meted out the penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days salary, demotion in rank or salary or transfer, removal or dismissal from office can appeal said decision. By inference or implication, when the respondent is exonerated of the charge against him, there is no occasion for appeal. In other words, in administrative disciplinary cases, a judgment of exoneration is inappealable.

However, in *Civil Service Commission v. Dacoycoy* (306 SCRA 425 [1999]) which incidentally is another

ponencia of Mr. Justice Pardo, the majority, with undersigned ponente dissenting, modified the above doctrine by allowing the CSC to appeal in cases where the respondent is exonerated of the charges. Nevertheless, in both cases, the Court did not deviate from the doctrine that the complainant, being a mere witness for the government, cannot appeal the decision rendered in the administrative case. In *Paredes*, we declared that the complainant is not the party adversely affected by the decision so that she has no legal personality to interpose an appeal to the CSC. In an administrative case, the complainant is a mere witness. No private interest is involved in an administrative case as the offense is committed against the government.

In the same vein, in *Dacoycoy*, the Court, asking and thereafter answering its own rhetorical question, said: “Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant George P. Suan, who was merely a witness for the government.”

In the instant case, when private respondent Resma was exonerated by the Court of Appeals, it was not the CSC but the complainants who filed an appeal. Having been filed by complainants, the petition should therefore be denied, in line with the above-stated doctrine.

Unfortunately, the aforementioned doctrine cannot be applied in the instant controversy because private respondent Resma failed to raise it as an issue on appeal.

As I stated in my dissenting opinion in *Dacoycoy*:

Fortunately for petitioner but not so for respondent, the latter failed to invoke the foregoing general rule. In a similar case, we held that the party favored by such law who fails to interpose any objection to an appeal may be deemed to have waived this right. The Court En Banc, speaking through Mr. Justice Camilo D. Quason in *Mendoza vs. Civil Service Commission* (233 SCRA 657 [1994]), held:

xxx xxx xxx

When private respondent appealed the decision of the MSPB to the CSC, petitioner never questioned the propriety of the appeal and preferred to defend the correctness of the decision. Likewise, petitioner failed to question before this Court the right of private respondent to appeal from the decision of the MSPB. A law limiting the right to appeal to the respondent in the administrative case is a rule of procedure, not of substantive law. Failure to invoke timely a rule of procedure in favor of a party constitutes a waiver thereof (*Republic vs. Judge Villanueva*, G.R. No. 83333, February 13, 1989, En Banc, Minute Resolution).

Having failed to question the complainants’ right to appeal, the petition may not now be dismissed on that ground.

I, therefore, join the majority opinion as stated in the dispositive portion thereof.

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